



CITY OF TIGARD, OREGON

REQUEST FOR PROPOSALS

ON-CALL / OF RECORD LANDSCAPE ARCHITECTURAL SERVICES

DATE DUE: Tuesday, September 25, 2007
TIME DUE: 02:00 PM local time

Envelopes must be sealed and marked with Project Title.
Proposers must submit one (1) original and three (3) complete copies of their proposal.

PROJECT MANAGER	RFP QUESTIONS:
Dan Plaza, Parks & Facilities Manager City of Tigard, Public Works Phone: (503) 718-2590 Fax: (503) 684-7297 Email: daniel@tigard-or.gov	Joe Barrett, Buyer City of Tigard, Financial & Information Services Phone: (503) 718-2477 Fax: (503) 684-7297 Email: joseph@tigard-or.gov

SUBMIT PROPOSAL TO:
Joe Barrett, Buyer
City of Tigard - Information Desk
13125 SW Hall Blvd.
Tigard, Oregon 97223

PUBLIC NOTICE
REQUEST FOR PROPOSALS
LANDSCAPE ARCHITECT OF RECORD SERVICES

The City of Tigard will receive sealed proposals from firms qualified to provide on-call/of-record landscape architectural services until 2:00 PM local time, Tuesday, September 25, 2007 at Tigard City Hall's Information Desk located at 13125 SW Hall Blvd., Tigard, Oregon 97223.

No proposal will be considered unless fully completed in a manner provided in the RFP packet. Facsimile and electronic (email) proposals will not be accepted nor will any proposal be accepted after the stated due date and time. Any proposal received after the closing time will be returned to the submitting firm unopened after a contract has been awarded for the required services.

RFP packets may be downloaded from <http://www.tigard-or.gov> or obtained in person at Tigard City Hall's Information Desk located at 13125 SW Hall Blvd., Tigard, Oregon 97223.

Proposers are required to certify non-discrimination in employment practices, and identify resident status as defined in ORS 279.029. Pre-qualification of proposers is not required for this project. All proposers are required to comply with the provisions of Oregon Revised Statutes and Local Contract Review Board (LCRB) Policy.

The City may reject any proposal not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any or all proposals upon a finding of the City if it is in the public interest to do so.

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SECTION 1

INTRODUCTION

The City of Tigard will receive sealed proposals from firms qualified to provide on-call/of-record landscape architectural services until 2:00 PM local time, Tuesday, September 25, 2007 at Tigard City Hall's Information Desk located at 13125 SW Hall Blvd., Tigard, Oregon 97223.

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SECTION 2

PROPOSER'S SPECIAL INSTRUCTIONS

A. PROPOSED TIMELINES

Wednesday, September 05, 2007

Advertisement and Release of RFP Packet

Tuesday, September 25, 2007 – 2:00 PM

Deadline for Proposal Submission

Week of October 01, 2007

Interviews

Tuesday, October 23, 2007

Contract Award by Local Contract Review Board

Thursday, November 01, 2007

Commencement of Services

NOTE: The City reserves the right to modify this schedule at the City's discretion. Proper notification of changes in the will be made to all interested parties.

B. GENERAL

By submitting a proposal, the Proposer certifies that the Proposal has been arrived at independently and has been submitted without any collusion designed to limit competition.

C. PROPOSAL SUBMITTAL

The Proposal and all amendments must be signed and submitted no later than Tuesday, September 25, 2007, to the address below. Each proposal must be submitted in a sealed envelope and designated with proposal title. To assure that your proposal receives priority treatment, please mark as follows.

2007 RFP – ON-CALL/OF RECORD LANDSCAPE ARCHITECTURAL SERVICES

September 25, 2007 – 2:00 PM local time

City of Tigard – Information Desk

Attn: Joe Barrett, Buyer

13125 SW Hall Blvd.

Tigard, Oregon 97223

Proposer shall put their name and address on the outside of the envelope. It is the Proposer's responsibility to ensure that proposals are received prior to the stated closing time. The City shall not be responsible for the proper identification and handling of any proposals submitted incorrectly. Late proposals, late modification or late withdrawals shall not be considered accepted after the stated bid opening date and time and shall be returned unopened. Facsimile and electronic (email) proposals will not be accepted.

D. PROTEST OF SCOPE OF WORK OR TERMS

A Proposer who believes any details in the scope of work or terms detailed in the proposal packet and sample contract are unnecessarily restrictive or limit competition may submit a protest in writing, to the Purchasing Office. A protest may be submitted via facsimile. Any such protest shall include the reasons for the protest and shall detail any proposed changes to the scope of work or terms. The Purchasing Office shall respond to any protest and, if necessary, shall issue any appropriate revisions, substitutions, or clarification via addenda to all interested Proposers.

To be considered, protests must be received at least five- (5) days before the proposal closing date. The City shall not consider any protest against award due to the content of proposal scope of work or contract terms submitted after the established protest deadline. All protests should be directed to Joe Barrett, Buyer, and be marked as follows:

RFP Specification/Term Protest

City of Tigard

Attn: Joe Barrett, Buyer

13125 SW Hall Blvd.

Tigard, Oregon 97223

If a protest is received in accordance with section above, the proposal opening date may be extended if necessary to allow consideration of the protest and issuance of any necessary addenda to the proposal documents.

E. PROPOSAL SUBMISSION AND SIGNING

All requested forms and attachments (Signature Page, Acknowledgment Addendum, Statement of Proposal, etc.) must be submitted with the Proposal and in the required format. The submission and signing of a proposal shall indicate the intention of the firm to adhere to the provisions described in this RFP.

F. COST OF PREPARING A PROPOSAL

The RFP does not commit the City to paying any costs incurred by Proposer in the submission or presentation of a proposal, or in making the necessary studies for the preparation thereof.

G. INTERPRETATIONS AND ADDENDA

All questions regarding this project proposal shall be directed to Joe Barrett, Buyer. If necessary, interpretations or clarifications in response to such questions will be made by issuance of an "Addendum" to all prospective Proposers within a reasonable time prior to proposal closing, but in no case less than 72 hours before the proposal closing. If an addendum is necessary after that time, the City, at its discretion, can extend the closing date.

Any Addendum issued, as a result of any change in the RFP, must be acknowledged by submitting the "Acknowledgment of Addendum" with proposal. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

H. BUSINESS TAX/FEDERAL TAX ID REQUIRED

The City of Tigard Business Tax is required. Chapter 5.4 of the Tigard Municipal Code states any business doing business in the City of Tigard shall pay a City of Tigard Business Tax. No contracts shall be signed prior to the obtaining of the City of Tigard Business Tax. Upon award of proposal, contractor shall complete a W-9 form for the City.

I. CITY'S PROJECT MANAGER

The City's Project Manager for this work will be Dan Plaza, Parks & Facilities Manager, who can be reached by phone at (503) 718-2590 or by email at daniel@tigard-or.gov.

J. PROPOSAL VALIDITY PERIOD

Each proposal shall be irrevocable for a period of sixty (60) days from the Proposal Opening Date.

K. FORM OF CONTRACT

A copy of the City's standard architectural services agreement, which the City expects the successful firm or individual to execute, is included as "Attachment C". The contract will incorporate the terms and conditions from this RFP document and the successful proposer's response documents. Firms taking exception to any of the contract terms shall submit a protest or request for change in accordance with Section 2.D "Protest of Scope of Work or Terms" or their exceptions will be deemed waived.

L. TERM OF CONTRACT

The term of the contract shall be a period of one (1) year with the option to renew for up to four (4) additional one-year (1-year) periods. The total term of the contract cannot exceed five (5) years.

M. TERMINATION

The contract may be terminated by mutual consent of both parties or by the City at its discretion with a 30 days' written notice. If the agreement is so terminated, Contractor shall be paid in accordance with the terms of the agreement.

N. INTERGOVERNMENTAL COOPERTIVE PURCHASING

The bidder submitting this proposal agrees to extend identical prices and services under the same terms and conditions to all public agencies in the region. Quantities stated in this solicitation reflect the City of Tigard usage only.

Each participating agency shall execute its own contract with the lowest responsible/responsive bidder for its requirements. Any bidder(s), by written notification included with their bid, may decline to extend the prices and terms of this solicitation to any and/or all other public agencies.

O. NON-COLLUSION

Proposer certifies that this proposal had been arrived at independently and has been submitted without collusion designed to limit independent bidding or competition.

P. PUBLIC RECORD

All bid material submitted by bidder shall become the property of the City and is public record unless otherwise specified. A bid that contains any information that is considered trade secret under ORS 192.501(2) should be segregated and clearly identified as such. This information will be kept confidential and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS 192. The above restrictions may not include cost or price information, which must be open to the public.

**SECTION 3
BACKGROUND**

In the past the City of Tigard has hired an array of professional architectural firms to prepare various park master plans, park site drawings, trail alignments, design skate park features, design and conduct public input processes, and prepare bid, construction and specification documents. City staff has also participated in the preparation of park site drawings and trail alignments as well as conducted public input processes, and prepared bid documents. The City is looking to streamline these processes by contracting with a landscape architectural firm (Architect) capable of providing the aforementioned services on an on-call basis. The projects assigned to the Architect will vary in size and scope.

A major, upcoming project that is likely to be assigned to the awarded Architect is the preparation of a new Park System Master Plan. It is estimated that this project will begin this winter. In addition there will be several small park design projects to be completed prior to June 30, 2008. The City currently has an Architect of Record retained and it anticipated that from time to time the Landscape Architect will work with the City's Architect of Record on City projects.

SECTION 4

SCOPE AND SCHEDULE OF WORK

Architect shall provide landscape design services related to complete conceptual design, contract plans preparation, technical specifications, and project estimates on an as needed basis to the City of Tigard for various projects throughout the City. Projects may range from small design work on a planter reconfiguration to large scale design work in a park.

A. DUTIES OF THE LANDSCAPE ARCHITECT

Architect's duties shall include, but may not be limited to, the following:

1. Research existing record drawings as necessary to determine existing conditions and field topography.
2. Prepare plans and drawings which illustrate project goals, limits, and materials, including appropriate plan views, cross-sections, notes, and details to guide contractors during any construction.
3. Perform calculations, studies, investigations, and analysis as necessary.
4. Attend public meetings and prepare presentations as necessary.
5. Communicate regularly with the City via telephone, fax, email, written-correspondence, and face-to-face meetings as required.
6. Prepare permit applications as needed.
7. Prepare and regularly update progress of any design work. A typical schedule should have 30%, 50%, and 95% submittals for City review.
8. Work with the City's Purchasing Office to prepare final construction contract plans and technical specifications as needed.
9. Prepare accurate and reliable Engineer's estimates on various projects to be used for budgeting purposes and as supplements to bid documents.
10. Interpret plans and specifications as required during the bidding process.
11. Assist the City, as needed, with any addenda that may be issued during the bidding process.
12. Provide plans and specifications reproductions to the City as required.
13. Attend and participate in any pre-bid or pre-construction conferences that may be requested by the City.
14. Assist the City with the review of any required contractor submittals, including any prequalification forms.

B. CITY'S RESPONSIBILITIES

The City will provide the following, but not necessary limited to, the following information and services:

1. Basic criteria for the project, record drawings (as available), and any other documents that may assist with design preparation.
2. Preparation, printing, and distribution of any construction solicitations, unless requested of the Architect as an additional service.
3. Access to and provisions for the Architect to enter and access the project site as needed.
4. Any required service that cannot, due to any laws, be performed by the Architect.

5. Contract and project administration and inspection during any construction unless this service is assigned to the Landscape Architect of Record.

SECTION 5

PROPOSAL CONTENT AND FORMAT

A. FORMAT

To provide a degree of consistency in review of the written proposals, firms are requested to prepare their proposals in the standard format specified below.

1. **Title Page**

Proposer should identify the RFP subject, name and title of contact person, address, telephone number, fax number, email address and date of submission.

2. **Transmittal Letter**

The transmittal letter should be not more than two (2) pages long and should include as a minimum the following:

- a. A brief statement of the Proposer's understanding of the project and services to be performed;
- b. A positive commitment to perform the services within the time period specified, starting and completing the project within the deadlines stated in this RFP; and The names of persons authorized to represent the Proposer, their title, address and telephone number (if different from the individual who signs the transmittal letter).

3. **Table of Contents**

The table of contents should include a clear and complete identification by section and page number of the materials submitted.

4. **Firm Qualifications**

- a. Background of the firm. This should include a brief history of the firm and types of services the firm is qualified to perform.
- b. Qualifications of the firm in performing this type of work. This should include examples of related experience and references for similar studies and projects.
- c. Parks Systems Master Plans development for cities with a population of 40,000 or more. Proposing firms should document and include examples of their experience with developing master plans for park systems for cities with roughly the same population or larger.

5. **Team Member Qualifications**

Project team and the team member's individual qualifications. Identify individuals and subconsultants who will complete this work, their experience, and their individual qualifications. Pertinent resumes of assigned personnel should be included.

6. **Project Approach**

- a. Proposers should submit a general approach work plan to accomplish the type of projects mentioned under the Scope and Schedule of Work. Work plans should include time estimates (in hours) for the following class of projects:
 - 1) Small yard landscaping (planting beds, retaining wall, etc.)
 - 2) Small Scale Park Development

- 3) Large Scale Park Development
 - 4) Park Master Plan Development
 - b. Indicate the extent to which City personnel would be expected to contribute to various projects.
7. **Cost Proposal**
The City intends to evaluate a Proposer's cost proposal based upon an hourly and direct cost fee structure. Proposers should include hourly billing rates and title classifications for all staff that may perform services under a subsequent contract with the City. A detailed listing of additional charges such as copies, mileage costs, etc. must also be included. Proposers should also detail a typical breakdown of assignments on a project, i.e. 50% of hours to a principal architect, 25% to junior architect, and 25% clerical support and supplies.
- B. **ADDITIONAL SERVICES**
Provide a brief description of any other services that your firm could provide the City and an approximation of the hourly charge for each service of this type. Such services would be contracted for on an "as needed" basis, to be provided and billed for separately.
- C. **ADDITIONAL INFORMATION**
Please provide any other information you feel would help the Selection Committee evaluate your firm for this project.
- D. **REFERENCES**
Please list three (3) references with, at the minimum, the follow information:
1. Company Name
 2. Contact Individual Name
 3. Contact Individual Title
 4. Contact Phone
- E. **DISPUTES**
Should any doubt or difference of opinion arise between the City and a Proposer as to the items to be furnished hereunder or the interpretation of the provisions of this RFP, the decision of the City shall be final and binding upon all parties.
- F. **CITY PERSONNEL**
No Officer, agent, consultant or employee of the City shall be permitted any interest in the contract.

SECTION 6 **PROPOSAL EVALUATION PROCEDURES**

- A. **SELECTION AND EVALUATION PROCESS**
A Selection Committee assembled by the City will review the written proposals. Proposals will be evaluated to determine which ones best meet the needs of the City. After meeting the mandatory requirements, the proposals will be evaluated on both their technical and fee

aspects. The Selection Committee will select the Proposer which best meets the City's needs based upon its evaluation of a firm's proposal. Proposals will be evaluated in accordance with the following:

1.	<u>Completed Proposal submitted on time</u>	<u>Pass/Fail</u>
2.	<u>An original plus three (3) copies of the complete proposal</u>	<u>Pass/Fail</u>
3.	<u>Transmittal letter</u>	<u>Pass/Fail</u>
4.	<u>Firm Qualifications</u>	<u>40 points</u>
5.	<u>Team Member Qualifications</u>	<u>25 points</u>
6.	<u>Project Approach</u>	<u>25 points</u>
7.	<u>Cost Proposal</u>	<u>10 points</u>
<u>TOTAL EVALUATION POINTS</u>		<u>100 POINTS</u>

B. PRESENTATION/INTERVIEW

At the option of the City, the top scoring Proposers (based on the criteria points) may be asked to make a presentation of their proposal. This will provide an opportunity to clarify or elaborate on the proposal, but will not, in any way provide an opportunity to change any fee amount originally proposed. The City's Project Manager will schedule the time and location of these presentations and notify the selected firms. If the City elects to conduct a presentation/interview process, twenty (20) additional criteria points will be assigned to the process and will be added to the participating Proposers' total points.

C. INVESTIGATION OF REFERENCES

The City reserves the right to investigate references and the past performance of any Proposer with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, its completion or delivery of a project on schedule and its lawful payment of employees and workers.

D. CLARIFICATION OF PROPOSALS

The City reserves the right to obtain clarification of any point in regards to a proposal or to obtain additional information necessary to properly evaluate or particular proposal. Failure of a Proposer to respond to such a request for additional information or clarification could result in rejection of their proposal.

E. RESERVATION IN EVALUATION

The Selection Committee reserves the right to either: (a) request "Best and Final Offers" from the two finalist firms and award to the lowest priced or (b) to reassess the proposals and award to the vendor determined to best meet the overall needs of the City.

F. INTENT OF AWARD

Upon review of the proposals submitted, the City may negotiate a scope of work and a architectural services agreement with one firm, or may select one or more firms for further consideration.

G. PROTEST OF AWARD

In accordance with Tigard Public Contracting Rule 30.135, any adversely affected Proposer has seven (7) calendar days from the date of the written notice of award to file a written protest.

H. PROPOSAL REJECTION

The City reserves the right to:

1. Reject any or all proposals not in compliance with all public procedures and requirements;
2. Reject any proposal not meeting the specifications set forth herein;
3. Waive any or all irregularities in proposals submitted;
4. In the event two or more proposals shall be for the same amount for the same work, the City shall follow the provisions of LCRB 30.095 and Section 137-095 of the Oregon Attorney General's Model Public Contract Manual;
5. Reject all proposals;
6. Award any or all parts of any proposal; and
7. Request references and other data to determine responsiveness.

SECTION 7
PROPOSAL CERTIFICATIONS

Non-discrimination Clause

The Contractor agrees not to discriminate against any client, employee or applicant for employment or for services, because of race, color, religion, sex, national origin, handicap or age with regard to, but not limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; selection for training; rendition of services. It is further understood that any contractor who is in violation of this clause shall be barred from receiving awards of any purchase order from the City, unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such acts is unlikely.

Agreed by: _____

Firm Name: _____

Address: _____

Resident Certificate

Please Check One:

☐ **Resident Vendor:** Vendor has paid unemployment taxes and income taxes in this state during the last twelve calendar months immediately preceding the submission of this proposal.

Or

☐ **Non-resident Vendor:** Vendor does not qualify under requirement stated above.
(Please specify your state of residence: _____)

Officer's signature: _____

Type or print officer's name: _____

**SECTION 8
SIGNATURE PAGE**

The undersigned proposes to perform all work as listed in the Specification section, for the price(s) stated; and that all articles supplied under any resultant contract will conform to the specifications herein,

The undersigned agrees to be bound by all applicable laws and regulations, the accompanying specifications and by City policies and regulations.

The undersigned, by submitting a proposal, represents that:

- A) The Proposer has read and understands the specifications.
- B) Failure to comply with the specifications or any terms of the Request for Proposal may disqualify the Proposer as being non-responsive.

The undersigned certifies that the proposal has been arrived at independently and has been submitted without any collusion designed to limit competition.

The undersigned certifies that all addenda to the specifications has been received and duly considered and that all costs associated with all addenda have been included in this proposal:

Addenda: No. _____ through No. _____ inclusive.

We therefore offer and make this proposal to furnish services at the price(s) indicated herein in fulfillment of the attached requirements and specifications of the City.

Name of firm: _____

Address: _____

Telephone Number: _____ Fax Number: _____

By: _____ Date: _____
(Signature of Authorized Official. If partnership, signature of one partner.)

Typed Name/Title: _____

If corporation, attest: _____
(Corporate Officer)

☐ Corporation

☐ Partnership

☐ Individual

Federal Tax Identification Number (TIN): _____

**ATTACHMENT A
ACKNOWLEDGMENT OF ADDENDA**

**City of Tigard, Oregon
Request for Proposal
On-Call/Of Record Landscape Architectural Services
Close: Tuesday, September 25, 02:00 PM local time**

I/WE HAVE RECEIVED THE FOLLOWING ADDENDA (*if none received, write "None Received"*):

- | | |
|----------|----------|
| 1. _____ | 3. _____ |
| 2. _____ | 4. _____ |

Date

Signature of Proposer

Title

Corporate Name

**ATTACHMENT B
STATEMENT OF PROPOSAL**

Name of Consultant: _____

Mailing Address: _____

Contact Person: _____

Telephone: _____ Fax: _____ Email: _____

accepts all the terms and conditions contained in the City of Tigard Request for Proposal for on-call/of-record landscape architectural services and the attached contract for architectural services (Attachment C):

Signature of authorized representative

Date

Type or print name of authorized representative

Telephone Number

Type or print name of person(s) authorized to negotiate contracts

Telephone Number

REFERENCES

Reference #1

Telephone Number

Project Title

Contact Individual

Reference #2

Telephone Number

Project Title

Contact Individual

Reference #3

Telephone Number

Project Title

Contact Individual

ATTACHMENT C
CITY OF TIGARD, OREGON
ARCHITECTURAL SERVICES AGREEMENT
(PROJECT TITLE)

THIS AGREEMENT, made and entered into this (Day) day of (Month), (Year), by and between the City of Tigard, a municipal corporation, hereinafter referred to as the "City," and (Name and Address of Firm), whose authorized representative is (Name of Representative), and having a principal being a registered architect of the State of Oregon, hereinafter referred to as the "Architect."

RECITALS

WHEREAS, the City's Fiscal Year (Fiscal Year dates - i.e. 2004-05) budget provides for the services of an Architect for the design and construction of (File Name & Project Number); and

WHEREAS, the accomplishment of the work and services described in this Agreement is necessary and essential to the program of the City; and

WHEREAS, the City desires to engage the Architect to render professional architectural services for the project described in this Agreement, and the Architect is willing and qualified to perform such services;

THEREFORE, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

1. Architect's Scope of Services

The Architect shall perform professional architectural services relevant to the Project in accordance with the terms and conditions set forth herein, and as provided in Exhibit 1, which is attached hereto and by this reference made a part of this Agreement.

2. Effective Date and Duration

This agreement shall become effective upon the date of execution by the City's Local Contract Review Board, and shall expire, unless otherwise terminated or extended, on completion of the work or June 30, (Year) whichever comes first. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. Architect's Fee

A. Basic Fee

- 1) As compensation for Basic Services as described in Exhibit 1 of this Agreement, and for services required in the fulfillment of Paragraph 1, the Architect shall be paid on an hourly rate based upon the "Schedule of Rates" in Exhibit 1 of this agreement, which shall constitute full and complete payment for said services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement. The Basic Fee shall not exceed the amount of (Amount of dollars expressed in words) dollars (\$Amount of dollars expressed numerically) without prior written

authorization.

- 2) The parties hereto do expressly agree that the Basic Fee is based upon the Scope of Services to be provided by the Architect and is not necessarily related to the estimated construction cost of the Project. In the event that the actual construction cost differs from the estimated construction cost, the Architect's compensation will not be adjusted unless the Scope of Services to be provided by the Architect changes and is authorized and accepted by the City.

B. Payment Schedule for Basic Fee

Payments shall be made upon receipt of billings based on the work completed. Billings shall be submitted by the Architect periodically, but not more frequently than monthly. Payment by the City shall release the City from any further obligation for payment to the engineer for service or services performed or expenses incurred as of the date of the statement of services. Payment shall be made only for work actually completed as of the date of invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

C. Payment for Special Services

Only when directed in writing by the City, the Architect shall furnish or acquire for the City the professional and technical services based on the hourly rate schedule as described in Exhibit 1 of this contract for minor project additions and/or alterations.

D. Certified Cost Records

The Architect shall furnish certified cost records for all billings pertaining to other than lump sum fees to substantiate all charges. For such purposes, the books of account of the Architect shall be subject to audit by the City. The Architect shall complete work and cost records for all billings on such forms and in such manner as will be satisfactory to the City.

E. Contract Identification

The Architect shall furnish to the City its employer identification number, as designated by the Internal Revenue Service, or social security number, as the City deems applicable.

F. Payment – General

- 1) Architect shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 2) Architect shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week except for individuals under the contract who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime.
- 3) Architect shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Architect or all sums which Architect agrees to pay for such services and all moneys and sums which Architect collected or deducted from the wages of

employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

- 4) The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.
- 5) Architect shall make payments promptly, as due, to all persons supplying services or materials for work covered under this contract. Architect shall not permit any lien or claim to be filed or prosecuted against the City on any account of any service or materials furnished.
- 6) If Architect fails, neglects or refuses to make prompt payment of any claim for labor, materials, or services furnished to Architect, sub-consultant or subcontractor by any person as such claim becomes due, City may pay such claim and charge the amount of the payment against funds due or to become due to the Architect. The payment of the claim in this manner shall not relieve Architect or their surety from obligation with respect to any unpaid claims.

4. Ownership of Plans and Documents: Records

- A. The field notes, design notes, and original drawings of the construction plans, as instruments of service, are and shall remain, the property of the Architect; however, the City shall be furnished, at no additional cost, one set of previously approved reproducible drawings, on 3 mil minimum thickness mylar as well as diskette in "DWG" or "DXF" format, of the original drawings of the work. The City shall have unlimited authority to use the materials received from the Architect in any way the City deems necessary.
- B. The City shall make copies, for the use of and without cost to the Architect, of all of its maps, records, laboratory tests, or other data pertinent to the work to be performed by the Architect pursuant to this Agreement, and also make available any other maps, records, or other materials available to the City from any other public agency or body.
- C. The Architect shall furnish to the City, copies of all maps, records, field notes, and soil tests which were developed in the course of work for the City and for which compensation has been received by the Architect at no additional expense to the City except as provided elsewhere in this Agreement.

5. Assignment/Delegation

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Architect shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

6. Architect is Independent Contractor

- A. The City's project director, or designee, shall be responsible for determining whether Architect's work product is satisfactory and consistent with this agreement, but

Architect is not subject to the direction and control of the City. Architect shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 3 of this Agreement.

- B.** Architect is an independent contractor and not an employee of City. Architect acknowledges Architect's status as an independent contractor and acknowledges that Architect is not an employee of the City for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by Architect to provide services under this contract are employees of Architect and not of City. Architect acknowledges that it is not entitled to benefits of any kind to which a City employee is entitled and that it shall be solely responsible for workers compensation coverage for its employees and all other payments and taxes required by law. Furthermore, in the event that Architect is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Architect under the terms of the agreement, to the full extent of any benefits or other remuneration Architect receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Architect or to a third party) as a result of said finding.
- C.** The undersigned Architect hereby represents that no employee of the City or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from the Architect, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.
- D.** If this payment is to be charged against Federal funds, Architect certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his/her normal charge for the type of service provided.
- E.** Architect and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
- F.** Architect certifies that it currently has a City business tax receipt or will obtain one prior to delivering services under this Agreement.
- G.** Architect is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. Indemnity

- A.** The City has relied upon the professional ability and training of the Architect as a material inducement to enter into this Agreement. Architect represents to the City that the work under this contract will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of the architectural profession under similar conditions and circumstances as well as the

requirements of applicable federal, state and local laws, it being understood that acceptance of an Architect's work by the City shall not operate as a waiver or release. Acceptance of documents by City does not relieve Architect of any responsibility for design deficiencies, errors or omissions.

- B.** Claims for other than Professional Liability. Architect shall defend, save and hold harmless the City of Tigard, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, of whatsoever nature, including intentional acts resulting from or arising out of the activities of Architect or its subcontractors, sub-consultants, agents or employees under this contract. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.
- C.** Claims for Professional Liability. Architect shall defend, save and hold harmless the City of Tigard, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, arising out of the professional negligent acts, errors or omissions of Architect or its subcontractors, sub-consultants, agents or employees in performance of professional services under this agreement. Any design work by Architect that results in a design of a facility that is not readily accessible to and usable by individuals with disabilities shall be considered a professionally negligent act, error or omission.
- D.** As used in subsections B and C of this section, a claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly or indirectly, in whole or in part, from the quality of the professional services provided by Architect, regardless of the type of claim made against the City. A claim for other than professional responsibility is a claim made against the City in which the City's alleged liability results from an act or omission by Architect unrelated to the quality of professional services provided by Architect.

8. Insurance

Architect and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Architect's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with respect to the interests of City and that any other insurance maintained by City is excess and not contributory insurance with the insurance required hereunder.

The policy or policies of insurance maintained by the Architect and its subcontractors shall provide at least the following limits and coverages:

A. Commercial General Liability Insurance

Architect shall obtain, at Architect's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage

shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000

B. Professional Liability

Architect shall obtain, at Architect's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent. Annual aggregate limit shall not be less than \$2,000,000 and filed on a "claims-made" form.

C. Commercial Automobile Insurance

Architect shall also obtain, at architect's expense, and keep in effect during the term of the contract (Symbol 1 or Symbols 8 and 9 as applicable) Commercial Automobile Liability coverage on an "occurrence" form including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

D. Workers' Compensation Insurance

The Architect, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Architects who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 each accident.

E. Additional Insured Provision

The Commercial General Liability Insurance Policy and other policies the City deems necessary shall include the City its officers, directors, and employees as additional insureds with respect to this contract. Coverage will be endorsed to provide a per project aggregate.

F. Extended Reporting Coverage

If any of the aforementioned liability insurance is arranged on a "claims-made" basis, Extended Reporting coverage will be required at the completion of this contract to a duration of 24 months or the maximum time period the Architect's insurer will

provide such if less than 24 months. Architect will be responsible for furnishing certification of Extended Reporting coverage as described or continuous “claims-made” liability coverage for 24 months following contract completion. Continuous “claims-made” coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this contract. Coverage will be endorsed to provide a per project aggregate.

G. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The 30 days notice of cancellation provision shall be physically endorsed on to the policy.

H. Insurance Carrier Rating

Coverage provided by the Architect must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

I. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Architect shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the address below ten days prior to coverage expiration.

J. Primary Coverage Clarification

The parties agree that Architect’s coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

K. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution, and errors and omissions policies required by this contract.

Architect’s insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without 30 days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

City of Tigard
Attn: (Name & Title of Person Letting Contract)
13125 SW Hall Blvd
Tigard, Oregon 97223

Such policies or certificates must be delivered prior to commencement of the work. Thirty days cancellation notice shall be provided City by certified mail to the name at the address listed above in event of cancellation or non-renewal of the insurance.

The procuring of such required insurance shall not be construed to limit Architect's liability hereunder. Notwithstanding said insurance, Architect shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

9. Termination Without Cause

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Architect. If City terminates the contract pursuant to this paragraph, it shall pay Architect for services rendered to the date of termination.

10. Termination With Cause

A. City may terminate this Agreement effective upon delivery of written notice to Architect, or at such later date as may be established by City, under any of the following conditions:

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
- 2) If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3) If any license or certificate required by law or regulation to be held by Architect, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Architect becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Architect, if a receiver or trustee is appointed for Architect, or if there is an assignment for the benefit of creditors of Architect.

Any such termination of this agreement under paragraph (A) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice of default (including breach of contract) to Architect, may terminate the whole or any part of this Agreement:

- 1) If Architect fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Architect fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to

correct such failures within ten days or such other period as City may authorize.

- 3) If Architect fails to eliminate a conflict as described in Section 14 of this agreement.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Architect shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (B), Architect shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Architect bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Architect. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

11. Non-Waiver

The failure of City to insist upon or enforce strict performance by Architect of any of the terms of this Agreement or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

CITY OF TIGARD	
Attn:	Attn:
13125 SW Hall Blvd. Tigard, Oregon 97223	
Phone: (503) 718-	Phone:
Fax: (503) 684-7297	Fax: (503) 620-6692
Email Address: @tigard-or.gov	Email Address: (insert address)

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to who notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

13. Merger

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

14. Professional Services

The City requires that services provided pursuant to this agreement shall be provided to the City by an Architect, which does not represent clients on matters contrary to City interests. Further, Architect shall not engage services of an architect and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests.

Should the Architect represent clients on matters contrary to City interests or engage the services of an architect and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests, Architect shall consult with the appropriate City representative regarding the conflict.

After such consultation, the Architect shall have (insert # of days) days to eliminate the conflict to the satisfaction of the City. If such conflict is not eliminated within the specified time period, the agreement may be terminated pursuant to Section 10 (B - 3) of this agreement.

15. Force Majeure

Neither City nor Architect shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within ten days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

16. Non-Discrimination

Architect agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Architect also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws. All facilities designed by Architect under this contract shall be designed to be readily accessible to and usable by individuals with disabilities as required by the Americans with Disabilities Act.

17. Errors

Architect shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

18. Extra (Changes) Work

Only the (City staff member's title and name) may authorize extra (and/or change) work. Failure of Architect to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Architect thereafter shall be entitled to no compensation whatsoever for the performance of such work.

19. Governing Law

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

20. Compliance With Applicable Law

Architect shall comply with all federal, state, and local laws and ordinances applicable to the work under this Agreement, including those set forth in ORS 279C.

21. Conflict Between Terms

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

22. Access to Records

City shall have access to such books, documents, papers and records of Architect as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

23. Audit

Architect shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. Architect agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

24. Severability

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

25. INDUSTRIAL ACCIDENT FUND PAYMENT

Architect shall pay all contributions or amount due the Industrial Accident Fund form that Architect or subcontractors incur during the performance of this Agreement.

26. Complete Agreement

This Agreement and attached exhibit(s) constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Architect, by the signature of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Architect has executed this Agreement on the date hereinabove first written.

APPROVED BY LOCAL CONTRACT REVIEW BOARD ON: _____

CITY OF TIGARD

By: (Authorized City staff person letting contract)

Date

ARCHITECT

Print Firm Name

Print Name & Title of Architect's Authorized Representative

Signature

Date

EXHIBIT 1
DUTY OF ARCHITECT

The Architect shall render professional architectural services as described below:

1. Basic Services

2. Special Services

Only when directed in writing by the City, the Architect shall furnish or acquire for the City the following professional and technical services:

3. Performance